

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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TOWNSHIP OF MACOMB,

Plaintiff-Appellant,

v

RONALD MICHAELS and DELORES  
MICHAELS,

Defendants-Appellees,

and

MICHIGAN TOWNSHIPS ASSOCIATION,

Amicus Curiae.

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UNPUBLISHED

May 11, 1999

No. 206594

Macomb Circuit Court

LC No. 95-004372 CZ

Before: Gribbs, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Plaintiff appeals as of right from the trial court's order granting defendants' motion for summary disposition pursuant to MCR 2.116(C)(10). We reverse.

Defendants' 300-acre farm is in an area of Macomb Township that is zoned for agricultural use. Since 1991, defendants have composted yard waste from other communities on their farm in return for substantial "tipping fees", and area residents have complained about the odor. Plaintiff asked the trial court to declare the large-scale composting operation a nuisance per se under the Rural Township Zoning Act, MCL 125.294; MSA 5.2963(24). The applicable zoning ordinance allegedly allows "private composting on active farm only, [which] shall not exceed an area of four hundred (400) square feet. . ." Large-scale composting operations, such as defendants', are not permitted under the applicable agricultural zoning ordinance. The trial court held that defendant's composting operation was an acceptable agricultural practice and therefore protected under the Right to Farm Act (RTFA), MCL 286.471 *et seq.*; MSA 12.122(1) *et seq.*

A trial court's grant of summary disposition is reviewed de novo on appeal. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The RTFA generally protects farms and farm operations by stating that they “shall not be found to be a public or private nuisance” if the farm or its operation conforms to “generally accepted agricultural and management practices” as determined by the Michigan commission of agriculture. MCL 286.473(1); MSA 12.122(3)(1). However, the RTFA does not preempt the application of the zoning ordinance at issue in this case. *City of Troy v Papadelis*, 226 Mich App 90; 572 NW2d 246 (1997).<sup>1</sup> Defendants argue that *Papadelis* is factually distinguishable from the case at bar. However, defendants' property has been zoned for agricultural use since 1943 and, just as in *Papadelis*, defendants' use of the land in this case is allegedly in violation of the existing zoning ordinance. The RTFA is not a defense to an action filed to enforce a zoning ordinance. *Id.* at 96. Therefore, summary disposition on that ground was improper.

Reversed and remanded. We do not retain jurisdiction.

/s/ Roman S. Gibbs  
/s/ Richard Allen Griffin  
/s/ Kurtis T. Wilder

<sup>1</sup> We note that the trial court did not have the benefit of this Court's decision in *Papadelis*, which was issued after the trial court's ruling in this case.